

Wisconsin Department of Transportation

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The Honorable Senator Roger Breske
Chairman, Senate Transportation Committee
Room 18 South, State Capitol
Madison, Wisconsin 53702

October 30, 2000

The Honorable Representative David Brandemuehl
Chairman, Assembly Committee on Highways & Transportation
Room 317 North, State Capitol
Madison, Wisconsin 53702

RE: Proposed Administrative Rule **TRANS 4**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 00-137

Dear Senator Breske and Representative Brandemuehl:

In accordance with the Department of Transportation's efforts to keep you informed of its ongoing rulemaking actions, enclosed is a courtesy copy of Final Draft rule **Trans 4**, relating to the **state public transit operating assistance program**, which is being submitted to the Legislature for committee review.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Ernie Wittwer
Linda Lovejoy
Dick Martin

CR 00-137

The Wisconsin Department of Transportation proposes an order to create TRANS 4.09(1)(title), (2)(title), (3)(title) and (4), relating to the state public transit operating assistance program.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



JOE MAASSEN

Deputy General Counsel
Office of General Counsel
Department of Transportation
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PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1) and 227.11(2), Stats.

STATUTES INTERPRETED: s. 85.20, Stats.

General Summary of Proposed Rule. Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats., and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program authorized under s. 85.20, Stats. 1999 Wisconsin Act 9 requires the Department to amend ch. Trans 4 to establish cost efficiency standards for all transit systems participating in the state aid program. In this amendment, the Department is proposing to use the six performance measures recommended by the Transit Advisory Council in 1997 as the basis for establishing the cost efficiency standards. The amendment defines the methodology to be used in establishing the standards, lays out a procedure for systems not meeting the standards to achieve compliance, and includes penalties for systems remaining out of compliance for a period of three years.

Fiscal Impact. The Department estimates that there will be no fiscal impact on the liabilities or revenues of any school district, vocational, technical and adult education district or sewerage district. The Department estimates that there will be no fiscal impact on liabilities of any county, city, village or town, except if the county, city, village or town is operating a transit system that is not in compliance with the cost efficiency standards set forth in this rule. The Department estimates that there will be no fiscal impact on state revenues or liabilities.

Copies of Proposed Rule. Copies of the proposed rule may be obtained upon request, without cost, by writing to Richard A. Martin, Department of Transportation, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707-7913, or by calling (608) 266-6812. Hearing-impaired individuals may contact the Department using TDD (608) 266-3351. Alternative formats of the proposed rule will be provided to individuals at their request.

PART 2

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1) and 227.11(2), Stats., the department of transportation hereby proposes to amend a rule interpreting s. 85.20, Stats., relating to the state public transit operating assistance program.

SECTION 1. Trans 4.09(1)(title), (2)(title) and (3)(title) are created to read:

Trans 4.09(1)(title) TRANSIT DEVELOPMENT PROGRAMS.

(2)(title) PERFORMANCE GOALS.

(3)(title) QUARTERLY PERFORMANCE GOALS.

SECTION 2. Trans 4.09(4) is created to read:

Trans 4.09(4) COST EFFICIENCY STANDARDS. (a) The department shall assess the performance of each transit system receiving aid under the program on an annual basis, using the 6 performance indicators defined in sub. (2).

(b) For purposes of analysis, transit systems are divided into the following peer groups:

1. Milwaukee.
2. Madison.
3. Medium bus systems.
4. Small bus systems.
5. Commuter bus systems.
6. Shared-ride taxi systems.

(c) For the Milwaukee, Madison and medium bus tiers, peer groups of similar sized transit systems with similar operating characteristics external to the state will be developed to establish performance standards. Data used for these peer groups will be the most recent available from the national transit database. For small bus, commuter bus, and shared-ride taxi tiers, standards shall be established using data from only in-state systems in these tiers, because no national database information is available for these types of systems. Data used will be from the preceding calendar year. Standards for each of the 6 performance measures defined in sub. (2) shall be set for each tier using a standard deviation. Systems that are within one standard deviation of

the arithmetic mean shall be judged as in compliance with the standard for the measure. Systems whose performance is better than the one standard deviation shall also be judged as in compliance with the standard for the measure. Systems that meet the standards for 4 of the 6 performance measures shall be deemed in compliance with the cost efficiency standards, and no further action will be taken.

(d) If a transit system does not meet the cost efficiency standards as defined under par. (c), a time-trend analysis shall be performed, analyzing the 6 performance measures over the most recent 5-year period. Data used will be the data from the preceding calendar year. A system showing improvement in 4 of the 6 indicators would be deemed in compliance with the cost efficiency standards, and no further action will be taken.

(e) If a transit system does not meet the cost efficiency standards as defined under pars. (c) and (d), an assessment shall be made of the implementation status of recommendations made in the system's most recent management performance audit. A system which has made significant progress in implementing the majority of recommendations targeted at improving efficiency shall be deemed in compliance with the cost efficiency standards, and no further action will be taken.

(f) If a transit system does not meet the cost efficiency standards as defined under pars. (c) to (e), the following actions shall be taken:

1. If management performance audit recommendations have not been implemented, the department shall provide technical assistance to aid in the implementation of the recommendations. If consultant services are necessary, the transit system shall pay the nonfederal share of the costs.

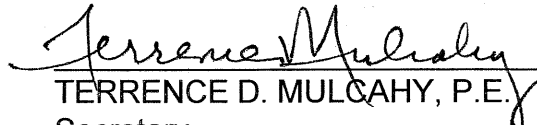
2. If a management performance audit has not been conducted within the last 3 years, the department shall schedule an audit as soon as possible.

(g) Systems deemed out of compliance with the cost efficiency standards as defined in pars. (c) to (e) shall be given a 3-year period in which to comply before being assessed a revenue penalty. After 3 years of noncompliance, a 10% revenue penalty shall be imposed, which will limit state aids to 90% of the state aid the system would have been entitled to if it were in compliance with the cost efficiency standards. The penalty shall remain in effect until the system comes into compliance.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 27 day of October, 2000.


TERRENCE D. MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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PART 3

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-137

AN ORDER to create Trans 4.09 (1) (title), (2) (title), (3) (title) and (4), relating to the state public transit operation assistance program.

Submitted by **DEPARTMENT OF TRANSPORTATION**

09-15-00 RECEIVED BY LEGISLATIVE COUNCIL.
10-05-00 REPORT SENT TO AGENCY.

RS:WF:jal;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☐

NO ☒

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES ☐

NO ☒

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☒

NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

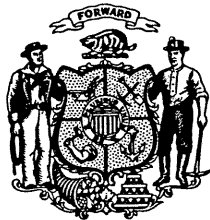
NO ☒

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CLEARINGHOUSE RULE 00-137

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. Trans 4.09 (4) (b), each subdivision should be renumbered from 1. to 6. In other words, the notation "(1)" should be replaced by the notation "1."

b. "Pars." should be substituted for "subs." in s. Trans 4.09 (4) (e), (f) and (g) and "par." should be substituted for "sub." in s. Trans 4.09 (4) (d).

c. In s. Trans 4.09 (4) (f) 1., the phrase "shall be responsible for paying" should be replaced by the phrase "shall pay."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section Trans 4.09 (4) (c) is not clear concerning how cost efficiency measurements for transit systems will be determined. First, read literally, transit systems that *exceed* mean cost efficiency standards by more than one standard deviation would be judged not in compliance under the fifth sentence of s. Trans 4.09 (4) (c). Second, s. Trans 4.09 (4) (c) is not clear concerning what transit systems will be used to establish performance standards. For Milwaukee, Madison and medium bus systems, will data for all mass transit systems contained in the national transit data base be used, including data for small and commuter bus systems and shared ride systems? For the small and commuter bus and shared ride taxi systems, will data from only comparable in-state systems be used to establish performance standards or will data

from Milwaukee, Madison and medium bus systems also be used? Section Trans 4.09 (4) (c) should be redrafted to address these ambiguities.

b. In s. Trans 4.09 (4) (g), the word "they" in the second sentence, should be replaced by the word "it."

PART 4
CR 00-137

ANALYSIS OF FINAL DRAFT OF TRANS 4

(a) **Need for Amended Rule.** 1999 Wisconsin Act 9 requires the Department to amend ch. Trans 4 to establish cost efficiency standards for all transit systems participating in the state aid program. In this amendment. The Department is proposing to use the six performance measures recommended by the Transit advisory Council in 1997 as the basis for establishing the cost efficiency standards. The amendment defines the methodology to be used in establishing the standards, lays out a procedure for systems not meeting the standards to achieve compliance, and includes penalties for systems remaining out of compliance for a period of three years.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on October 19, 2000. No modifications were made to the proposed rule as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following two persons appeared/registered at the hearing:

Robert C. Johnson, Chairman, Wisconsin Urban Transit Association, 2311 Badger Drive, Waukesha, WI 53188—spoke in favor of the rule and submitted written testimony.

Gary R. Goyke, Legislative Representative, Wisconsin Urban Transit Association, 354 West Main Street, Madison, WI 53703—registered in favor of the rule.

Written comments were also received from the following persons:

Steven A. Billings, Director of Parking and Transit, City of Sheboygan, 608 S. Commerce Street, Sheboygan, WI 53081.

Ann Gullickson, Transit Service Manager, Madison Metro Transit System (in support of the rule).

Alan Meindel, Transit Meindel, City of Fond du Lac, City-County Government Center, 160 South Macy Street, P. O. Box 150, Fond du Lac, WI 54936-0150 (in opposition to the rule).

(d) **Response to Legislative Council Recommendations.** All of the Legislative Council recommendations have been incorporated into the proposed rule.

(e) **Final Regulatory Flexibility Analysis.** The proposed rule will have no adverse impact on small business.